Supreme Court, U.S.
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No. _____

In The
SUPREME COURT OF THE UNITED STATES

GERALD D. BUSH,
Petitioner,

v

ZEELAND PUBLIC SCHOOLS BOARD OF EDUCATION
and
CITIZENS INSURANCE CO. OF AMERICA
Respondents

On Petition For A Writ Of Certiorari
To The Supreme Court Of Michigan

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS

1. WILL THE COURT PROTECT JUSTICE WHERE THE STATE HAS TRAMPLED IT?

2. SHOULD THE SUPREMACY CLAUSE BE PROTECTED AGAINST ANNULMENT BY STATE AGENTS?

3. ARE THE STATE EMPLOYEE PROPERTY RIGHT STATUTE AMENDMENTS UNCONSTITUTIONAL?

4. IS THERE A RIGHT IN THE STATES TO DISQUALIFY PROVEN UNETHICAL GOVERNMENT ATTORNEYS?

5. IS A PROPERTY RIGHT EMPLOYEE'S PRO SE SPEECH IN LEGAL PROCEEDINGS PROTECTED BY THE FIRST AMENDMENT?

6. WILL THE COURT DEFINE AND PROTECT THE RIGHTS INTENDED UNDER 28 USC 1654?

7. WHAT DUE PROCESS AND EQUAL PROTECTION IS NECESSARY IN STATE AGENCY DECISIONS?

8. MAY STATE AGENTS SEARCH AND SEIZE THE MENTAL PERSON OF A GOVERNMENT EMPLOYEE IN LIGHT OF CONSTITUTIONAL PROTECTIONS?

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CITATIONS

Petitioner's two teacher tenure cases were consolidated by the Michigan Supreme Court or it's Clerk.

GERALD BUSH, Plaintiff-Appellant
v
ZEELAND PUBLIC SCHOOLS BOARD OF EDUCATION, Defendant-Appellee

SC: 116478, 116560
COA: 223030, 213446
State Tenure Commission:
98-000040, 97-000042
lv den 463 Mich 875; 618 NW2d 591 (2000); reh den ____ Mich ____; 620 NW2d 849 (2000)

Bush consolidated his Worker's Compensation case.

GERALD D. BUSH, Plaintiff-Appellant
and MESSA, Intervening-Plaintiff,
v
ZEELAND PUBLIC SCHOOLS, and CITIZENS INSURANCE COMPANY OF AMERICA,
Defendants-Appellees

SC: 116894
COA: 221108
WCAC: 97-0586
lv den 463 Mich 918 (2000)
reh den _____ Mich _____; 623 NW2d 595 (2001)

PETITION FOR WRIT OF CERTIORARI

JURISDICTION

This Court has jurisdiction under 28 USC 1257. The Michigan Supreme Court denied review of 3 agency decisions. In the two consolidated tenure cases, they denied leave on September 26, 2000 (2a) and rehearing on December 27, 2000. (1a) Extension of time was granted by Justice Stevens to and including May 26, 2001. (90a) In the Worker's Compensation case, the Michigan Supreme Court denied leave on November 29, 2000 (45a) and rehearing on February 26, 2001. (44a)

As to 28 USC 2403(b), certification may apply, since the constitutionality of the Teacher Tenure Act is at issue. However, Respondent is an agent of the State.

CONSTITUTIONAL & STATUTORY PROVISIONS

The Constitution's introduction "establish[ing] Justice," the Supremacy Clause, Article VI; the 1st, 4th, 8th, 9th and 14th Am; 28 USC 1654; Michigan Constitution, Art 1, sec 11 & 13; the Michigan Teachers Tenure Act, MCL 38.71 et seq.; MSA 15.1971 et seq. (63a)

28 USC sec 1654 states:

Appearance personally or by counsel.

In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

Michigan Constitution, Article 1,

Sec 11. The person, houses, papers and possessions of every person shall be secure from unreasonable searches and seizures. (in part)

Sec 13. A suitor in any court of this state has

the right to prosecute or defend his suit either in his own proper person or by an attorney.

INTRODUCTION TO OPINIONS BELOW

The two tenure cases are Bush's fourth and fifth teacher tenure cases (T4 & T5). The third is Bush's Worker's Compensation case (WC). The WC case was handled by counsel except for Bush's motion for reconsideration to the Michigan Supreme Court. T4 & T5 were all pro se. Only T4 has a decision by a court - the Court of Appeals. (T4 3a, reh den 5a) In T5, Bush's appeal by right was rejected by the Chief Judge and rehearing before a 3 judge panel was denied. (22a) The tenure agency decisions are at: (T4 Tenure Commission 7a & ALJ 14a; T5 ALJ 23a, Chairperson 38a, Tenure Comm. 41a). In the WC case, the COA denied leave (47a). The WC Appellate decision is at: (WC 48a). And the ALJ decision: (WC 56a).

STATEMENT

Petitioner has been unable to enforce his rights under the Constitution, state and federal laws in part because of his pro se status; Respondent's unethical attorneys; agency and court resistance to law and rulings of this Court.

Due to the 23 year history of the case, 3 cases, limited pages and number of reasons to grant the petition, the complete story here is impossible. (Respondent's WC attorney said the papers in the case reached his waist. WC Tr V5 374. That's before these 2 tenure cases and the WC appeals. Thus for now, Petitioner requests that historical facts stated by decisionmakers suffice, realizing they are incomplete and inaccurate in some respects. (See T5 23a-24a; WC 56a-58a)

Petitioner was employed by Respondent as a teacher in 1969 and became tenured. His work life was normal until Mr. Jones came in 1978. Then it changed drastically. (WC 61a; T5 29a) Bush exercised

many protected liberties, mostly 1st Am., between 1978 and the present. They are the only valid motives Jones had for harassing and discriminating against him. Finally, after years of unlawful acts, seniority violating layoffs, subterfuge, lies, violation of contracts, enslavement, 3 suspensions, harassment, discrimination, retaliation and a threat of "catching" him, Bush could not tolerate it anymore. He went on sick leave, short and long term disability and sought Worker's Compensation and court relief. (WC Tr 14-378, WC 27a)

During his last 3 years of work, Bush was pro se on appeal against Respondent in his first tenure case (T1). Jones knew it and retaliated by suspending Bush himself, without Due Process and transferring him. That started his third Tenure case. (T3) (See WC Exh 0 or T5 Exh 16) Afterwards, Bush also filed a civil rights case pro se. (WC Exh N; T5 Exh 19). And a contract violation case that came to this Court. (T5 Exh 18) Respondent and Jones won because of their unethical attorneys.

Herein Petitioner challenges 3 separate agency cases with their findings and decisions on Constitutional and Due Process grounds.

Interrelated to some extent is the civil rights suit against Respondent, Administrators, Union and officials thereof (See WC Exh N, complaint in 1:96-CV-420 (25p.)) and other cases where Petitioner was pro se. Ultimately, these briefs, filings and transcripts were used against Bush in the WC and T5 cases. (See WC a ; T5 28-32a)

The WC hearings covered several years, but a decision was finally reached in July, 1997. (56a)

Shortly after, based on Respondent's unspoken intent to reduce liability, Respondent decided unilaterally to change Bush's status from sick leave, which it had been since 1993, to "leave of absence" retroactively to 1993. (See 24a; T5 Exh 1) Again, no Due Process was present. Thus, this case (T4) was born on November 17, 1997 with a board resolution to

that effect. (T5 Exh 1) Bush again had to appeal, due on Christmas Day, and was late. The school moved for accelerated judgment. Bush moved to disqualify their attorney because of over ten years of severe unethical conduct. Decisions on motions precluded a hearing on the merits. (7a -) Bush appealed the ALJ decision to the Tenure Commission. (14a) The Michigan Court of Appeals granted leave, affirming. (3a)

None even spoke of all the evidence of unethical conduct. But they denied disqualification.

While appeals in all the above cases are continuing, Respondent attempted to force Bush back to work, where he could be harassed more effectively and kept from pursuing his lawful remedies by extra unpaid work (violation of 13th Am). (A tactic used in 1978-81, 1991-93.) They attempted to recall Bush from their unilaterally imposed "leave of absence." But first Bush had to see a psychologist because of what he had written in his briefs, etc. and his truthful testimony of anger at Jones, etc. When Bush refused, he was terminated again without Due Process and T5 was born. (23a-37a)

Bush timely appealed and a hearing was held. Bush contended his First Amendment, Due Process, Equal Protection and Dr. Patient-Privilege were violated. (T5 23a-37a) It didn't matter. He still lost. Because of all the erroneous rulings, a large transcript and missing facts he needed more than 20 days to appeal. Extension of time to contest the decision was denied by the Chairperson. (38a) Bush sought rehearing challenging the authority of the Chairperson to decide extensions of time and the denial of extension. Again he lost. (41a) Bush appealed these decisions to the Michigan Court of Appeals. The chief judge dismissed. (22a) and rehearing by the required 3 judge panel was denied. (22a). He appealed to the Michigan Supreme Court, who denied leave and rehearing (2a, 1a). Thus, there is no appellate decision on the merits. (For other facts see T5 23a-29a)

REASONS FOR GRANTING THE PETITION

1. BECAUSE JUSTICE REQUIRES IT.

The short reason for granting the writ is the total unreliability of these agency decisions and the absence of quality review leading to the loss of substantial rights. The Court will find here, at least, Supremacy Clause, First Amendment, Due Process and statutory violations. Plus, an unconstitutional state Tenure Act and unethical government attorneys. All are in battle against a pro se teacher without a job who has done nothing wrong, except exercise protected rights.

One ALJ summarized compelling reasons for granting the petition:

> "Mr. Bush, I appreciate what you are trying to do, but this is not the place to do it. We are here on a limited focus, and that's all we are going to do here. I know you feel that you have not been given justice. I know that you feel you have not been given due process. <u>But I'm not the one to give you justice or due process</u>. My focus -- any jurisdiction that I may have on behalf of the Teacher Tenure Commission is limited to the issue before us." (T5 Tr V4 p 9-10.) (emphasis added)

The ALJ ruled out the principle of *falsus in uno, falsus in omnibus* as to subterfuge. (T5 V4 p 10-12) Clearly, fairness was lacking.

2. TO UPHOLD THE SUPREMACY CLAUSE AGAINST ANNULMENT.

This petition proves that the Supremacy Clause, Article VI, cl 2, is routinely violated and there is little or no effective recourse at the bottom rungs of the judicial ladder in state courts for pro se litigants.

The Court has said that some of its reasons for granting review are that the case raises "an issue of

significant public interest or jurisprudential importance or conflicts with controlling precedent." ***Bounds v Smith***, 430 US 817, 827, (1977)

This petition concerns at least two of the three. ***Bounds*** specifically addressed the "fundamental constitutional right of access to the courts," a substantial pro se concern here. ***Id***. at 828. Germane to that "access" are decisions consistent with the Supremacy Clause. That is certainly one of "jurisprudential importance," since it is the foundation stone of the Constitution and Bill of Rights. Without it, law and order crumbles, as is the case here. The third ***Bounds*** reason for granting review is the decision "conflicts with controlling precedent." ***Id***. That also is a Supremacy issue and certainly is the case here.

Petitioner sees the Supremacy Clause (and law and order) crumbling at a rapid pace, a fact the Court may not be aware of. Petitioner refers the Court to respected independent authority who has studied the issues, but not experienced them as Petitioner has.

In the book The Supreme Court, author Lawerence Baum (6th Ed) states that there is inherent resistance to the Supreme Court (and hence to the Supremacy Clause), which is clearly evident in the present cases. Petitioner assumes Baum has observed these facts in cases primarily involving attorneys. Bush contends the situation is much worst for pro se litigants. Consider the following quotes. (all emphasis and () added.)

> ". . . judges sometimes rebel against the Court's policy, though their rebellion is usually quiet. p 240. (or *sub silentio*? see ***Bush v Gore***, 121 S Ct 525, 531 (2000))
>
> "Disagreement about judicial policy tends to follow ideological lines."
>
> "Of course, trial judges and administrators may also disagree with Supreme Court decisions. A great many teachers and school administrators disapprove of the Court's

decisions limiting religious observances in public schools. (and many other rights, 1st Am., 14th, etc.) * * * This disagreement is a major source of noncompliance and partial compliance with both sets of decisions. (true here) * * * Supreme Court policies may conflict with officials self-interest if they threaten existing practices . . . (true here) * * * . . . some Ohio towns have ignored the Court's decision." ***Id.*** at 240. (also true here)

". . judges may avoid following the Supreme Court policies . . "

"Police departments (gov't officials in general) tend to resist decisions that limit their powers . . " p 241

"And some judges, who resent their subordination to the Court or who feel that its basic approach to the law is wrong, accord its decisions less authority." (or none as here)

The Court's authority tends to decline as organizational distance from the Court increases. Officials at the grass-roots level, far removed from direct contact with the Court, may not (never) feel obligated to adjust their policies to the Court's decisions." p 242

"Failure to follow the Supreme Court's lead does not always lead to reversal. The losing litigant may not appeal. Moreover the great majority of judges are reviewed by a court other than the Supreme Court, and the reviewing court may share their opposition to the Court's policies." p 244 (so very true)

"sanction[s have] weaknesses. Most importantly, it requires that people bring litigation challenging agency behavior, and they do not always do so." (very few do)

"officers seldom receive any personal sanctions for practices (that violate clear rights) that cause evidence to be thrown out." p 244 (absolutely correct here).

"It has been relatively simple for the Court to oversee the fifty state governments that must carry out its decisions on the drawings of legislative districts. It is a far more difficult matter for the Court to oversee the day-to-day activities of the thousands of police officers who investigate crimes." p 245

"federal judges and administrators are probably better implementers of decisions than are their state counterparts. p 245. (maybe, but not in Bush's experience)

". . but the gap between the rules of law that the Court establishes and the actions taken by judges and administrators is often considerable. (very true) * * * . . this gap reflects the Court's weaknesses as a policy maker, in that it can exert little control over the implementation process. Most important, the sanctions that it can apply to disobedient officials are relatively weak . . . " (very true) p 245-246.

"[State] [l]egislatures sometimes adopt statutes that seem clearly to violate the Court's decisions (true here), in order to limit the Court's impact and to express opposition to its rulings." p 256

Like presidents, governors can influence both legislative responses to the Court's decisions and their implementation.

" State legislatures and governors engage in direct defiance of the Court's decisions more often than do Congress and the president. This difference may result chiefly from the sheer number of states rather than from differences in the behavior of state and federal officials. Still, it suggests that the Court may face special difficulties when it seeks to bring about fundamental changes in state policies." p 258. (primarily because there is virtually no recourse, but to the US Supreme Court, under

the Younger doctrine)

The present cases demonstrate the truths of the above statements. They are about judges, the state legislature, and local officials all defying the Supremacy Clause. Not always on the same issue or in the same way, but all defiant none the less. The Court should accept this case to defend the Supremacy Clause and for the sake of the poor and lower classes who depend upon it for their rights versus the ill accounted for wealth, i.e. power, of the State governments.

Some examples from the cases at hand. First, Bush cited Supreme Court cases to support his argument that his briefs and testimony, etc. were protected speech under the First Amendment and that he could neither be sent to a psychologist for it or fired for not going. The judge ignored it and ruled against him. Subsequently Bush was found to have none of these rights and been forced to appeal to this level to enforce them. (See 4 for facts)

Second, the Michigan Legislature passed Tenure Act amendments which clearly conflict with this Courts rulings on the 14th Amendment. (See 3) They place a huge burden of successful appeal on 14 Am. property right teachers after termination that clearly conflicts with ***Roth***, ***Loudermill, post***.

Third, for 23 years Respondent's agents have been deliberately violating state laws and rights protecting Bush. These officials, whom state authorities at one time found used "bad faith" and "subterfuge" and lies to avoid Bush's protections under the Tenure Act (T1), have an equal disregard for the Constitution and rights it protects. (WC Exh 2) Falsus in uno, falsus in omnibus. Can a Zebra change his stripes?

This issue was raised below. (T4 MSC Lv ques appeal #10) Plus, if the Court considers reference to Supreme Court cases, there are many other places. (See T5 MSC Lv App bf; WC reh p 19-20)

3. THE '93 AMENDMENTS TO THE MICHIGAN TEACHER TENURE ACT CONFLICT WITH RULINGS OF THIS COURT AND ARE UNCONSTITUTIONAL.

The 1993 amendments to the Tenure Act of 1937 (MCL 38.71 et seq.; 63a) clearly violate the Supremacy Clause including the Supreme Court's determinations of 14th Amendment rights in ***Board of Regents v Roth***, 408 US 564 (1972); ***Perry v Sindermann,*** 408 US 593 (1972); ***Cleveland Bd. of Educ. v Loudermill, Parma Bd. of Educ. v Donnelly***, 470 US 532 (1985). Furthermore, Petitioner is asking the Court to revisit these holdings in light of the facts and severe damages of the present case. See ***Loudermill, supra***, J. Marshall concurring at 548. Not only has Bush now suffered unjust termination, but in the past 23 years he was unjustly disciplined, enslaved, transferred, suspended 3 times without any hearing and laid off twice by subterfuge in evasion of the Act many years before the unconstitutional Amendments - all without any due process. (See WC Exh 2,4,11,16,18,19,21,22,23,24,26-30,34, 42, F,G,H,L,N,O) Clearly Respondents care nothing for law, order, or Justice.

In fact, Respondents have an unwritten policy of -- we'll violate the act and/or right and let Bush prove it in the courts, if he can, while we, as gov't, have both judicial bias on our side and unlimited resources not our own. (See Baum quotes, ***supra***.) Obviously, these unconstitutional amendments stand in the shadow of such a policy.

The cases cited stand generally for Due Process for property right teachers, charges, notice and a pretermination hearing. The Amendments eliminated some of these basic requirements, and others they pay no attention to. That, in itself, violates the Supremacy Clause.

Now the Board, at the urging of administrators, can dismiss based only on their allegations. (MCL 38.102; (73a-74a) In fact, there is no burden of proof

unless and until the teacher makes a successful appeal. (T5 30a compare T4 7a)

The Amendments force Bush, and all teachers like him, to timely and successfully appeal to the Tenure Commission in order to qualify for a hearing there. They must "contest the controlling board's decision" while they have no job or income. (Amend. MCL 38.104(1) (75a); (T5 24a). If they do not "contest", are late or are unsuccessful at appealing, as Bush has been at times, the termination or action is final. ***Id.*** (4a, 9a, 15a) If they are successful at appealing, they are suppose to have a hearing and decision within 200 days. ***Id.*** (5)(g-h) But 200 days without pay is a huge loss itself, not counting meeting the huge additional demands of successful appeals. See ***Loudermill, supra***, J. Marshall concurring at 548.

The 1993 amendments also changed the teacher's rights to judicial appeal. Previously, after a board decision, teachers had an appeal by right to the Tenure Commission and to circuit court. Now, its been ruled, they must appeal by leave to the Court of Appeals, although the language does not say that. (MCL 38.104(7) (79a); See T4 3a, 22a) There are several other problems with the Act, but space does not permit their discussion.

Bush contends it is unjust and unconstitutional for him to have to "run the gauntlet" (***Abney v US***, 431 US 651, 662, (1977)) of numerous appeals (in 7 cases to date), with their included expenses in work, time, money, emotion and distress, resulting from wrong, onesided, subterfugious and retaliatory decisions without charges, evidence, hearing, cross examination or finding any facts at the employer level before discipline or discharge.

Bush was a tenure teacher subject to "discharge or demotion . . . only for reasonable and just cause and only as provided in this act." MCL 38.101 (73a) But that never stopped Jones from taking whatever action he wanted to against Bush.

In T4 Bush "contested" the unilateral

retroactive change in his status. He had only 20 days to appeal (due on Christmas Day, due to subterfuge by ZPS attorneys and administrators) and did by letter on Christmas Eve. (Note: TC Rules at the time allowed 30 days. MCL R 38.143; See 17a) But it was filed late. Subsequently, Bush was denied a hearing on the merits and Respondent unjustly won by the unfair rules of accelerated judgment. (9a)

Bush argued that subterfuge was involved in the timing of the case at Christmas. (T4 Tr 81-83) See ***Pauley v Hall***, 124 Mich App 255, 266; 335 NW2d 197 (1983). But no one listened. The ALJ doesn't even mention it. (7a-) Plus, he argued and proved there were mail receipt problems in general and especially at Christmas to no avail. (T4 9a-13a; 15a-18a)

In T5, his dismissal, again no official charges or Board hearing. (T5 23a-37a)

In short the Amendments violate the Supremacy Clause and the 14th Amendment.

On leave to appeal to the Michigan Supreme Court, Bush "contested" the appeal process stating basic liberties were at risk. (T5 Lv p 16-21.)

On reconsideration he contended the Act amendments were unconstitutional and again requested review of the appeal by right issues. (T4&5 ques 2 & 3, p 3-6)

His reply brief best addressed the issue. (T4&5 p 1-10)

The Work Comp Motion for reconsideration addressed it also. (WC #116894, p 19-20)

4. THERE IS A CONFLICT BETWEEN FEDERAL AND STATE RULINGS ON THE RIGHT TO DISQUALIFY UNETHICAL ATTORNEYS.

Respondent's attorneys have a 13 year record of misconduct in cases involving Bush extending even to this Court. (See Mot. Disq. & Exh 17-19) In T4 a written motion to disqualify Respondent's attorneys was submitted at the outset citing Supreme Court cases. A fair hearing was held and documentary and

testimonial evidence entered. No evidence was disputed. (T4 Trans V2; Exh 1-19) Bush did not present all the evidence he could have found because of time pressures. (Tr V1 p 7, 39, V2 p 54, 107)

Bush repeatedly stated one purpose of the Board's agent's T4 action was to interfere with his time in preparing a US Supreme Court case. (T4 Tr V1 7-8, 39, 59) Attorney March has had direct involvement in these cases along with Jones, Bush's principal tormentor, for 13-14 years. (T5 Tr V1, p 96, 98, 102, 122, 144) Mr. March was involved in drafting "all resolutions". (T5 V1 96, 98, 102, 122) Feenstra was even "informed through legal counsel" of Bush's visit to psychologist. (T5 V1 144)

Mr. March's unethical conduct began in 1987 with Bush's first Tenure case (T1). First, he unethically manipulated the Stipulation of Facts, which helped him get a reversal of the Decision in Bush's favor. Then he repeated lied to the courts on appeal, including this one, about the facts and the law. (WC Exh 2; T4 Exh 1-19) Furthermore, his firm and the reversing judge's former firm previously had a business relationship against teachers. See ***Holland Sch Dist v Ed Assn***, 380 Mich 314 (1968) (Townsend, former gov't attorney).

Respondent's attorney, Jon March, admitted to this Court, argued that the Tenure Commission had no authority to disqualify unethical attorneys (another lie?) and due process was lacking, but he did not dispute the evidence or testimony. (T4 Tr V2 p 9-10)

The motion was denied on lack of authority grounds. (7a, 13a)
The Tenure Commission acknowledged Supreme Court authorities, but affirmed. (15a, 19a)

The Court of Appeals affirmed on lack of jurisdiction grounds. (3a) None addressed the effect of subterfuge in service on jurisdiction.

The Michigan Supreme Court approved *sub silentio*, as before, and denied leave (1a, 2a) even though the issue was raised. (T4 Lv ques SC #2, A #1,

p 20-28; T5 Lv p 14-15; T4&5, Mot Rec Bf p 1-3; Rply Bf p 10-14)

Decision on this question is important because of the following reasons. These contracted hourly paid government attorneys are quite aware that their lies and misconduct are concealing grievous violations of law and rights. Should officials of the Court be doing that? Of the government?

At the roots of disqualification is the right to fairness. This Court has said: "In the discharge of its duty, a fair hearing is a fundamental requirement." ***Atchison, T&SFR Co v US***, 284 US 248, 262, (1931). (emphasis added) The fairness must extend to all aspects of judicial proceedings including agencies. In these cases it didn't. (typical.) How does fairness come from lies to the courts or from subterfuge manipulating a stipulation of facts or from appeals to clerks to dismiss or from judge shopping?

This Court said also that "Court proceedings are held for the solemn purpose of endeavoring to ascertain the truth which is the *sine qua non* of a fair trial." ***Estes v Texas***, 381 US 532, 540, (1965) There is a long history of falsification here. More than this Court will ever know.

In the next section Bush is arguing for free speech in judicial proceedings, a freedom denied him. Obviously, some will find a conflict. But free speech in judicial proceedings is not a license to lie to the courts about the facts or the law, as Respondent's attorneys do all the time.

Fairness is lacking on several other counts. Continued representation has allowed Mr. March and his firm to do both appeals to this level. T5 included 4 days of hearings. Obviously, they are still profiting from their misconduct. And so are Respondent's guilty agents. Plus, these attorneys have a conflict of duty. Their duty is to the students and taxpayers who pay them, not to Respondent's unethical agents, who continually have their ear. (T5 Tr V1, p 96, 98, 102, 122, 144) Yet they represent them before the taxpayer

or student, and without cost. (See WC Civil Rts case, Exh N, V, & contract Exh 39)

At the prehearing conference Bush said "It's been a repetitive habit of theirs to come up with things just about the time that I've got to make court filings and so on, just to keep me from being able to do them." (T4 Tr V1 p 8; 7) Would unethical lawyers do that? These cases are the evidence. They interfered with Bush's time in appealing his civil rights case. Plus, there could be much more involvement that Bush does not know about - i.e. calls to the clerks, suggestions to dismiss, do me a favor, etc.

The Court has entertained several federal cases involving attorney disqualification in the past 20 years deciding primarily conflicts about when disqualification appeals can be heard. ***Cunningham v Hamilton Co., Ohio,*** 527 US 198 (1999); ***Firestone Tire v Risjord***, 449 US 368 (1981); ***Flanagan v US***, 465 US 259 (1984); ***Richardson-Merrill Inc. v Koller***, 472 US 424 (1985). It can be presumed from these cases that attorney disqualification is warranted, at times, for misconduct. And, since it has been upheld by the Federal Circuit Courts, is a settled issue there. But Petitioner is not aware of any Supreme Court case to date that has addressed the relevant issues or decided a state disqualification case. Petitioner suggests that this case is the best it will find.

Issues to consider are, for one, the amount of misconduct necessary for disqualification, the damages to Justice, fairness and the government's role therein and the damage to the opposing party when the unethical attorney is not disqualified.

The Court has briefly discussed irreparable damages arising from failing to disqualify opposing counsel in the federal context. ***Firestone, supra***, 378, fn 13. Here there are many innumerable irreparable damages to Bush and his family, to education, to students and to confidence in the judicial system.

For 23 years Bush's life has been on hold. It is still being damaged day after day. That's irreparable.

Bush has not had a normal pay check or job since 1993. Yet he has had to repeatedly pay all the appeal fees - many thousands of dollars - without any decisions on the merits. In these cases state appeal fees total $1300, not counting what Bush's WC attorney paid or this Court's fee. Bush has invested much in time, energy and money in pursuit of justice, but never found it, in part, because of attorney lies.

Here Bush tried to enter some evidence of the damages to himself and his family. (T4 V2 p 48-49) But he was prohibited by the ALJ's (36a)

An additional reason to review is attorney misconduct in general is a wide spread problem in Michigan. ***In re Thurston***, 226 Mich App 205; 574 NW2d 374 (1997) (attorney lied to COA in oral arguments); ***Grievance Administrator v Fried***, 456 Mich 234 (1997) (conspired to cause disqualification of judges); ***Grievance Administrator v Deutch***, 455 Mich 149 (1997). In several cases the Michigan Courts have stated "to recite all such instances [of misconduct] would result in a restatement of the entire record of proceedings," ***Wayne Co Bd of Rd Comm'rs v GLS LeasCo***, 394 Mich 126, 131, 229 NW2d 797 (1975); ***Badalamenti v William Beaumont Hospital***, 237 Mich App 278, 291, 602 NW2d 854 (1999).The same is true here, with the exception that the misconduct here is much more pervasive, since it has involved 5 teacher tenure cases, 1 federal civil rights case, a contract case and a Michigan Employment Relations case to date in 13-14 years against Respondent.

Yet the Michigan courts refuse to grant relief to this pro se litigant at the time of occurrence of this misconduct. Only years later, supposedly, may a grieving litigant "apply" to the Attorney Grievance Commission to have discipline imposed haphazardly on an unethical attorney or, as usually happens, not at all. But that is long after that attorney has won, collected his outrageous fees and watched the loser lick his still bleeding wounds from the injustice

system. Bush has done that. Furthermore, it is notoriously ineffective, since few attorneys are investigated or reprimanded. (See Grand Rapids Press, May 20, 2001 p B1 - 126 of 34,275 attorneys) And none are at the request of pro se litigants that Petitioner is aware of. Plus, according the Press, it is a secret affair.

Bush has several times requested the Michigan Supreme Court accept the case under its "superintending control" powers in order to deal with attorney misconduct. ((T4) Bush v ZPS, MSC #116560 p 20; (T5) MSC #116478 p 4; (T3) MSC #102453 p 6) It has always refused. *Sub silentio* they approve.

Michigan courts have decided that disqualification of prosecutors is necessary in some situations. ***People v Doyle***, 159 Mich App 632; 406 NW2d 893 (1987) (for conflict of interest). ***Osborne v Osborne***, 459 Mich 360; 589 NW2d 763 (1999); ***People v Herrick,*** 216 Mich App 594; 550 NW2d 541 (1996). But here, where unethical conduct is charged and proven by a pro se litigant, they have, with great prejudice, held disqualification is not available.

Bush concluded long ago that the Michigan Courts and judges are prejudiced against pro se litigants. They have proved it repeatedly "beyond a reasonable doubt."

Plus, maybe this Court's own policies on disqualification should be reviewed. Bush moved for disqualification of Mr. March in this Court. (#97-1645) The motion was returned by the Clerk on March 17, 1998 without even being addressed to Justice Stevens, Justice of the 6th Circuit. (See T4 Mot. Disq.)

In conclusion, the Court has hoed around the edges of the weed in deciding disqualification appeal rights for attorneys. Now its time to hoe the weed!

5. STATE RULINGS ON THE 1st AMENDMENT CONFLICT WITH RULINGS OF THIS COURT.

This Court has held on several occasions that state employee First Amendment rights are protected.

> "[T]he First Amendment, as the court below noted, already protects state employees not only from patronage dismissals but also from 'even an act of retaliation as trivial as failing to hold a birthday party for a public employee . . when intended to punish her for exercising her free speech rights.' 868 F2d, at 954, n 4" US at 75, fn 8. ***Rutan v Republican Party of Illinois***, 497 US 62 (1990)

While that may be true, and Bush hopes it is, enforcement of the right is very difficult. In fact, 99% impossible. There are many First Amendment aspects of this case dating from 1978 to the present. None have been decided in favor of the First Amendment. In fact, most have been ignored or nullified directly or *sub silentio*. (T5 28a)

One troubling aspect of this case is the fact that Bush has been unable to enforce any First Amendment right in any of more than 8 cases to date (one a federal civil rights case) and has long been retaliated against for exercising the right to litigate. Bush effectively lost his First Amendment rights when he first accepted a government payroll check. This petition proves it.

In Bush's Worker's Compensation (WC) case, Respondent entered briefs as evidence that Bush had represented himself repeatedly in misdemeanor defenses against the small town of Zeeland and in some civil cases. (WC Exh W-Z, esp X) These facts were used against Bush to deny WC benefits - injury income - and caused the biased judge to view Bush as "litigious". (WC 58a, 61-62a)

In T5, Bush was ordered by Respondent's chief administrator to see a psychologist based totally upon Bush's politically incorrect statements written in briefs to various courts, including this one, complaining about pervasive injustice and unethical attorneys who cause it. Because Bush refused to fully comply with the order, he was dismissed without Due Process, again, and his tenure rights terminated,

except for the right to appeal. (T5 25a-33a) Bush contended it was a "ruse" to discharge him. (35a-37a) The penalty - dismissal - is "cruel and unusual punishment" (8th Am) for one who is innocent and only exercising long protected 1st Am. rights.

Timmis v Bennett, 352 Mich 355; 89 NW2d 748 (1958) held that "absolute privilege" applies to judicial proceedings protecting the speaker from libel and slander suits. It has even been applied to lies. Luther v Luther, Michigan Court of Appeals #214317, unpublished.

There is even a "qualified privilege".

> Michigan law has long recognized that an individual has a qualified privilege to communicate to others as to any subject matter in which that individual `has an interest, or in reference to which he has a duty, to a person having a corresponding interest or duty.' ***Bacon v Mich Cent. RR Co***, 66 Mich 166, 170, 33 NW 181 (1887)" ***Freeman v Unisys Corp***, 898 F Supp 485, 491 (E.D. Mich 1995)

But no privilege applies to pro se Bush. Michigan Courts have ruled directly and *sub silentio* that his pro se speech in judicial proceedings may be used against him by Respondent. (1a, 2a, 23a-37a) But most often they ignore his speech.

Bush first protested that his speech was protected by the First Amendment and Supreme Court rulings at the post-termination hearing citing ***Imbler v Pachtman***, 424 US 409 (1976) and ***Rendell-Baker v Kohn***, 457 US 830 (1982). (T5 Trans Vol 1, p 173-184) And again in his post hearing brief, but still could not prevail. (Brief p 8-9). (28a, 31a)

As a result of his politically incorrect speech, Bush was ordered to see a psychologist for search and seizure (in violation of 4th Am. & Mich. Const. Art. 1, Sec 11.) of mental information demanded by Respon-

dent ZPS administrators (and attorneys ?). Evidence was entered that Bush had not complied with this demand for evaluation and he was dismissed as a result. (23a-37a)

Administrators or their attorney had prejudiced the psychologist before Bush seen him and then called him as a Respondent witness. (27a-28a) Bush protested based on privacy and doctor-patient privilege. (See written Objections; Trans V1, p 41-52) But despite his objection the psychologist testified. (27a)

On cross examination Bush was able to get one piece of good evidence. The Dr. testified in his expert capacity that employees in a bully-supervisor work situation have little choice but to fight or, as Bush was forced to do, flee. (T5 Tr V2, p 46-54) That testimony had before hand been confirmed by Robert Tift, former Respondent teacher , who fled Jones' harassment in 1984, but still has anger at him for the harassment he suffered and damage to his career and right to work. (WC Tr Vol X, 813-841)

Respondent's habitually unethical attorney lied stating Bush had no First Amendment protections in this instance. (T5 Tr V1 p 175, 181; Post Hearing Bf, p 23-29) Guess who prevailed?

Bush addressed the issue in his post-hearing Brief. p 8-9. The ALJ rejected his arguments and did not address the authorities. (28a-31a) The Tenure Commission did not consider the issue because Bush's motion to extend time was denied and rehearing denied. (38a, 41a) The Court of Appeals did not consider the issue because Bush appealed by right and the Chief Judge, lacking authority, threw out the appeal before Bush could even file a brief. (22a) Bush moved for rehearing contending the Chief judge did not have authority or jurisdiction and contended the 14th Am. was violated. Rehearing was denied. (22a)

Because of these procedural handicaps and the need to address them at the Supreme Court, this issue was not raised on leave. On motion for

reconsideration the issue was not raised because the cases were consolidated and a power failure wiped out Bush's computer work. (T4&T5 Mot Rec p 6) The consolidated reconsideration reply brief speaks of the issue at p 4-5, 8, 14-15.

6. PRO SE LITIGANTS RIGHTS UNDER 28 USC 1654 AND OTHER PROVISIONS NEED TO BE DECIDED BY THIS COURT.

The right to litigate pro se has long been protected. 28 USC 1654. And it's protected in many ways. Michigan Constitution, Art 1, sec 13; Tenure Act 38.104(5)(C) (76a); R 38.141 Rule 11. This Court has held the same right is found in the 6th Amendment. ***Farretta v California***, 422 US 806 (1975); ***Flanagan v US,*** 465 US 259, 268 (1984)

But a right in name only is no right at all.

It is presumed that the drafters of 28 USC 1654 intended that those granted rights therein had a "right to be heard" to some extent, not to just appear. Does "heard" mean that the case will be decided in accord with superior authority under the Supremacy Clause? Rarely does it happen. Does it cover Equal Protection and Due Process? Petitioner would like to know, because he hasn't experienced it yet in 10 years of litigation. Does it mean issues raised will be addressed? Or facts will be found with honesty? That would be a start.

Because pro se litigants are poor, inferior, under class or can't find an attorney, does: the Supremacy Clause evaporate? the right to enter evidence abscond? the right to call witnesses vanish? the right to a decision on the evidence and merits escape? the right to appeal cease? the right to justice die?

Obviously some sort of right was intended to be protected. But is it a substantial right or a figurative one? In Bush's over 10 years of experience it has been totally figurative.

Bush is the only teacher in Michigan history

with 5 tenure cases (plus a contract case and other cases not against Respondent), yet not one has been heard by the Michigan Supreme Court. Only 1 has been heard by the Court of Appeals and it was only on motions and was against the authorities. (3a) When do the merits get heard? Where can JUSTICE be found?

This Court needs to decide what rights pro se litigants have and what relief is available.

Bush has for years argued in prior cases that pro se litigants rights are being routinely and wrongfully denied. (31a)

In fact, that was part of what his testimony was about in the Worker's Comp. case and was part of the reasons behind the case. Before it, he could not enforce the laws. Then and since his pro se speech has been used against him. (25a-31a, 53a, 58a)

Here he first raised the pro se issue at the Michigan Supreme Court. T4 Lv p 3 at 8, ques 12. Plus he complained about the lack of justice from the court of appeals in the brief. (p 8-19; Reconsideration of the consolidated cases, p 1-5; T5 lv p 9-13) Bush had found by much experience that raising such issues at the Court of Appeals is nonproductive.

In the WC case Bush argued (and proved?) the ALJ was biased against him because he was pro se. (WC MSC Lv mot rec p 7-13) He labeled Bush "litigious". (58a, 63a) But the ALJ was also wrong on the facts and the law. (Id. p 13-23)

The Supreme Court has ruled repeatedly *sub silentio* that discrimination against pro se litigants is allowed in Michigan. They endorse it.

But it isn't fair or justice to repeatedly run pro se litigants through the "gauntlet" of endless appeals, while taking lots of their money, time, emotions and sometimes lives, giving them nothing in return. (***Abney, supra***, 662) It is a cruel hoax!

The present cases show what happens when the hoax never comes to an end. The damages go way beyond what is seen here.

7. THE 14TH AM. DUE PROCESS AND EQUAL PROTECTION CLAUSES HAVE BEEN REPEATEDLY VIOLATED.

There are many (too many) issues here that could be and should be raised.

In T4 Bush's Court of Appeals reply brief was returned because it was 13 pages instead of 10 and then he was coerced to pay a $75 motion fee to refile it after he had already paid the $250 filing fee. (6a) It was decided without the reply brief. (3a)

In T5 Bush appealed by right and the Chief Judge, lacking authority, threw out the appeal before Bush could even file a brief, but after collecting $250. (22a) Bush moved for rehearing ($75) contending the Chief Judge did not have authority or jurisdiction and contended the 14th Am. was violated. Rehearing was denied. (22a) Reconsideration to the Michigan Supreme Court addressed Due Process issues. (Mot 1, 2, 3, p 1-5)

The Worker's Compensation case was not represented by Respondent's tenure counsel. Therefore, the long history of unethical conduct was not at the front. But it was mixed into the history of previous unjust decisions and anger Bush discussed and suffered from. That biased ALJ didn't mention any of 72 exhibits directly. Indirectly he concluded from the briefs filed Bush is "litigious". (WC 58a, 63a) He found only one of 4 psychologists credible - Respondent's hired gun - and none of 10 others. In short, the decision is clearly incompetent, biased, unlawful and violates the constitutional intent of the Act. (See WC, Bush MSC Mot. Rec.)

There are other Equal Protection and Due Process issues to be concerned with. Bush in the WC case, moved pro se for rehearing at the State Supreme Court. He had just 21 days to do so. (Actually less, since the decision went by mail to his attorney, then he had to decide and mail the decision to Bush.) Respondent's counsel had lots (1/3) more time to answer (28 days). (Bush knows of other cases where

the same is true.) With the extra time Respondents were able to prepare a 40p brief. Bush only had time for a 23p brief and it was incomplete. Even then Respondents did not address the issues raised.

Respondents in the WC case entered evidence of Bush's mental abilities consisting of his legal briefs, filings and pro se defense against misdemeanor charges brought by an associated local government, the small town of Zeeland. (WC Exh W, X, Y, Z) allegedly, in order to prove he was mentally able to work. But the evidence of misdemeanor convictions helped prove he was a bad man. (WC Exh X, Y)(58a, 61a-62a)

Bush contends that "bad man" evidence is not relevant in this case, since it had nothing to do with the workplace, and violates his First Am. rights. And puts him "jeopardy" a 2nd time. (5th Am.) And violates his rights to "counsel. (6th Am.; Mich, Const. Art. 1, sec 13) Plus it helped deny him a benefit, which is cruel and unusual punishment. (8th Am.)

The primary WC issue was whether continued unchecked law violations, discrimination, harassment and bullying by a supervisor (Jones) (i.e. the hostile workplace) is stressful, causes depression, suicide or possibly workplace violence and should be therefore compensatable under the theory of fight or flight. The record proved these facts. The ALJ ignored them.

Furthermore, the WC decision violates Equal Protection of the law rights. Bush cited a case clearly showing how another worker had been compensated for a relatively minor boss caused injury - employee kicked by supervisor. (See WC, Bush MSC Mot. Rec. p 19)

Plus, the WC judges refused to consider violations of constitutional rights established by this Court or retaliation as injury. (WC, Bush MSC Mot. Rec. p 19-23

8. TO DECIDE IF MENTAL SEARCH AND SEIZURE VIOLATES CONSTITUTIONAL RIGHTS

There is no doubt about the facts of the Respondent's attempts to search and seize Bush's mentality. Plus there is no doubt about the decision processes permitting it. Or those judging it "reasonable." (T5 23a-37a) But the issue was never decided by a court. The ALJ who said he does not have to provide "justice" or "due process" (***supra***) is the only one who approved.

Petitioner contends it violates 4 or more Amendments. The 1st, 4th, 5th and 14th and privacy rulings, at least, and likely the 9th and 10th also. Furthermore, it may violate the 13th.

For one, the Act does not require or permit it. Since it does not permit the disqualification of unethical attorneys, it certainly cannot permit the search for or seizure of private mental information.

Secondly, it was unequally applied. Bush argued Jones was not sent for mental evaluation, nor any union official, etc. or other teacher. That violates the 14th Amendment. (T5 V1 p 48-51) Jones even had influence. (T5, V1 p 141-142)

Plus, Bush protested based on privacy and doctor-patient privilege and other grounds. The ALJ said there is none here. (See T5 written Objections; T5 Trans V1, p 41-52)

CONCLUSION

The WC ALJ stated that Bush wanted to "vent his spleen" against Jones with whom he had a "personality conflict" (61a) and that he was "attempting to manipulate the legal system." (62a)

But that judge (and all the others) was not "vigilant" as mandated below.

The US Supreme Court has said:

> "the court must be vigilant to scrutinize the attendant facts with an eye to detect and a hand to prevent violations of the Constitution

> by circuitous and indirect methods. Constitutional provisions for the security of persons and property are to be liberally construed, and "it is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon." ***Boyd v US***, 116 US 616, 635, 29 L ed 746, 752, 6 S Ct Rep 524; ***Gouled v US, supra*** p 304 [65 L ed 650, 41 Sup Ct Rep 261] (emphasis added) - ***Byars v US***, 273 US 28, 32, (1926)

The Respondent, a government agency, it's administrators, and their unethical lawyers need very close "scrutiny." So do the Michigan courts, agencies and legislature. Together they have accomplished years and years of subterfuge and "circuitous and indirect methods" of evading the tenure law, the Constitution, specifically the Supremacy Clause, and rulings of this Court.

The Court can set a good example here and "prevent violations of the Constitution by circuitous and indirect methods." Id.

For all the above reasons Mr. Bush requests the Court grant this Petition.

Respectfully submitted,

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May __, 2001

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